



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2017-0484; FRL-9978-56-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Continuous Opacity Monitoring Requirements for Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State of Maryland's Clean Air Act (CAA) sections 111(d) and 129 State Plan for municipal waste combustors (MWCs). The revision reflects amendments to Code of Maryland Regulations (COMAR) 26.11.08.08, which update the MWC opacity compliance provisions.

The Maryland Department of the Environment (MDE)'s revised regulations provide that quality assurance (QA) and quality control (QC) requirements for continuous opacity monitors (COMs) are found in COMAR 26.11.31, rather than the now discontinued Technical Memorandum (TM 90-01). EPA is approving this revision to Maryland's CAA sections 111(d) and 129 State Plan in accordance with the requirements of the CAA.

DATES: This rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R03-OAR-2017-0484. All documents in the docket are listed on the <https://www.regulations.gov>

website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION, CONTACT: Emily Linn, (215) 814-5273, or by e-mail at linn.emily@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 10, 2016, the State of Maryland submitted a formal revision (MD Submittal #16-05) to its CAA sections 111(d) and 129 State Plan for MWCs. The revision contains Maryland’s amendments to COMAR 26.11.08.08, “Requirements for an Existing Large MWC with a Capacity Greater Than 250 Tons Per Day.” Among other minor changes¹, these amendments update the references for opacity compliance which previously referenced a discontinued technical memorandum, TM 90-01, that addressed QA/QC procedures for COMs. COMAR 26.11.08.08 now refers to COMAR 26.11.31, which contains QA and QC procedures for COMs, similar to those previously found in the no longer effective TM 90-01.² EPA is approving this

¹ Other changes made by Maryland to COMAR 26.11.08.08 include 1) changing the “Emission Standards for a Large MWC” to read “10 percent opacity with COMS,” rather than “10 percent opacity with CEMS,” and 2) changing the “Performance and Compliance Test Requirements” to include the following statement: “...the Department may determine compliance and non-compliance with the visible emission limitations by performing EPA reference Method 9 observations based on a 6 minute block average” (formerly, it included the following statement: “In case of inconsistencies in data or conflicting data Method 9 results will determine compliance”).

² EPA previously approved Maryland’s State Plan for large MWCs on April 8, 2008 (*see* 73 FR 18968). EPA also approved, as a revision to the Maryland state implementation plan, the regulatory requirements for QA/QC controls

revision to Maryland's 111(d) and 129 State Plan for MWCs in accordance with the requirements of the CAA for sections 111(d) and 129 state plans.

In the same state rulemaking action, MDE also revised the title of COMAR 26.11.08.07, from "Requirements for Certain Municipal Waste Combustors" to "Requirements for Municipal Waste Combustors with a Capacity of 35 tons or greater per day and less than or equal to 250 Tons Per Day," to clarify that the state regulation applies to small MWCs. The text of 26.11.08.07 remains unchanged, and thus the requirements for MWCs remain unchanged. This clarification to the title of COMAR 26.11.08.07 is a minor administrative change and is not part of this action.

On November 6, 2017 (82 FR 51380 and 82 FR 51350), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the State of Maryland approving revisions to its CAA sections 111(d) and 129 State Plan for MWCs. EPA received an adverse comment on the rulemaking and withdrew the DFR prior to the effective date on December 26, 2017 (82 FR 60872). In this rulemaking, EPA is responding to the comment submitted on the proposed approval of the State Plan revisions and is approving the revisions to Maryland's State Plan for MWCs.

II. State Submittal and EPA Analysis

EPA has reviewed Maryland's submittal to revise its State Plan for MWCs in the context of the requirements of 40 CFR part 60, subparts Cb and Eb. In this action, EPA is finalizing its determination that the submitted revision meets the above-cited requirements. EPA is amending 40 CFR part 62, subpart V (40 CFR 62.5110 and 62.5112), to reflect this approval.

for COMs in COMAR 26.11.31 on November 7, 2016 (*see* 81 FR 78048).

III. Public Comments and EPA Responses

EPA received one adverse comment on the proposed approval of the revisions to the State of Maryland's CAA sections 111(d) and 129 State Plan for MWCs. All other comments received were either supportive of or not specific to this action and thus are not addressed here.

Comment: The commenter asserts that EPA should not be involved in matters of the state's choosing. Additionally, the commenter asserts that if the changes to the plan are largely administrative in nature, EPA should let the state go without making them spend resources to make that administrative change.

Response: EPA disagrees with the commenter's assertions. EPA did not specifically direct Maryland to make these amendments. Instead, Maryland submitted to EPA this revision to its State Plan for MWCs and requested that EPA amend the appropriate sections of 40 CFR part 62, subpart V, to reflect approval of this Plan revision. EPA is required to act on State Plan revisions submitted by states. In response to the commenter's assertion, while these changes are largely administrative in nature, they are needed to update Maryland's State Plan for COMs requirements. EPA is responding to MDE's request and finalizing the revisions to Maryland's State Plan for MWCs in this action, as they are consistent with CAA sections 111(d) and 129.

IV. Final Action

In this final action, EPA is amending 40 CFR part 62, subpart V, to reflect the receipt and approval of the revisions to Maryland's State Plan for MWCs in accordance with the requirements of the CAA.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This

rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 provides, in part, that Federal agencies shall use technical standards that are developed or adopted by voluntary consensus standards bodies. Pub. L. 104-113 (15 U.S.C. 272 note) (March 7, 1996). Agencies are not required to use such standards if doing so would be inconsistent with applicable law or otherwise impractical. Pub. L. 104-113 (section 12(d)). EPA is not, in this action, using technical standards, as contemplated by the National Technology Transfer and Advancement Act. Rather, EPA is reviewing and responding to Maryland's Section 111(d)/129 plan submission, and, in such case, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Moreover, in such context, EPA has no authority to disapprove a Section 111(d)/129 plan submission for failure to use voluntary consensus standards, and it would be inconsistent with applicable law for EPA, when it reviews a Section 111(d)/129 plan submission, to require use of such standards in place of a Section 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the National Technology Transfer and Advancement Act does not require, here, the use of voluntary consensus standards. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to

each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Maryland's revisions to their 111(d) and 129 State Plan for MWCs may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 15, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

For the reasons stated in the preamble, title 40 CFR part 62 is amended as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 62.5110 is amended by adding paragraph (c) to read as follows:

§ 62.5110 Identification of plan.

* * * * *

(c) On May 10, 2016, Maryland submitted a revised State Plan and related COMAR 26.11.08.08 amendments.

3. Section 62.5112 is amended by adding paragraph (c) to read as follows:

§ 62.5112 Effective date.

* * * * *

(c) The plan revision is effective **[insert date 60 days after date of publication in the Federal Register]**.

[FR Doc. 2018-11746 Filed: 5/30/2018 8:45 am; Publication Date: 5/31/2018]